RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the court. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

ADMIRALTY — JURISDICTION. — A contract with the owners to supply their vessels, for the period of a year, with all the provisions they might require, while in the port where the supplies are to be furnished, is not a maritime contract, and a court of admiralty has no jurisdiction of a suit for damages for its breach by the shipowners. *Diefenthal* v. *Hamburg-American Co.*, 46 Fed. Rep. 397.

AGENCY — FELLOW-SERVANT — COMMON MASTER. — In an action against the defendant to recover for an injury caused by the negligence of his servant, it is no defence that the plaintiff was employed in a common employment with that of the negligent servant, unless the servants had a common master also. The facts were that the plaintiff and the negligent servant were both engaged in work upon a house, but had different masters who were independent contractors. *Johnson* v. *Lindsay & Co.*, [1891] A. C. 371.

The English law upon this point has heretofore been somewhat doubtful, owing to the language of Lord Cairns in *Wilson* v. *Merry* (L. R. 1 H. L. 326, 331, 332), and to the case of *Wiggett* v. *Fox* (11 Ex. 832). The court disapprove the recent Scotch decision of *Woodhead* v. *Gartness Mineral Company* (4 Sc. Sess. Cas. 4th Series, 469).

AGENCY — MASTER AND SERVANT — RATIFICATION OF TORT. — Coal ordered by plaintiff from defendant was delivered at plaintiff's house by a third person not in defendant's employ, acting without defendant's knowledge. While unloading the coal the volunteer negligently broke a plate-glass window. Afterwards, with knowledge of the accident, defendant demanded from plaintiff payment for the coal. *Held*, in an action for breaking the window, that by ratifying the delivery of the coal, defendant became responsible for the tort of the volunteer. *Dempsey* v. *Chambers*, 28 N. E. Rep. 279 (Mass.).

AGENCY — RATIFICATION — WHEN IMPLIED. — The plaintiff intrusted a certain deed to his agent, the defendant. The defendant made an unauthorized disposition of the deed. The question raised was whether the plaintiff by his acquiescence had ratified the defendant's unauthorized act, and so relieved him from liability. *Held*, that he had not ratified, that "mere passive inaction or silence, which would amount to an implied ratification in favor of third parties, might not amount to that in favor of the agent." *Triggs* v. *Jones*, 48 N. W. Rep. 1112 (Minn.).

AGENCY — VOLENTI NON FIT INJURIA. — The fact that a person with full knowledge of the risk voluntarily continues without remonstrance in a dangerous employment does not preclude his recovery for an injury caused by defective machinery, although the defects may have been an element of danger which he contemplated. Whether in such circumstances he voluntarily assumed the risk is a question of fact for the jury. *Smith* v. *Baker & Sons*, [1891] A. C. 325.

This case effectually disables the Latin maxim which was brought upon the field with much parade in *Thomas* v. *Quartermaine* (18 Q. B. D. 685). To be sure, only one of the lords expressly disapproves the decision of that case. But each of the majority opinions discusses the maxim *volenti non fit injuria* in a way which shows that the formula in question has little value in determining cases of the class of *Thomas* v. *Quartermaine*.

CARRIERS — RAILROAD — REFUSAL TO ACCEPT TICKET. — It is the duty of a passenger, if he has not the required ticket or token evidencing his right to travel on that train, to pay his fare or quietly leave the train when requested, and resort to the appropriate remedy for the damages he has sustained. Here he had not had his ticket properly stamped, he was ejected, and the court *held* that he could not recover for the expulsion. *Peabody* v. *Oregon Ry. & Nav. Co.*, 26 Pac. Rep. 1053 (Ore.).

CARRIERS — RAILROAD — REFUSAL TO ACCEPT TICKET. — Where the conductor of a railroad train returns to a passenger the wrong portion of a return-trip ticket, and another conductor on the return trip refuses to accept it after the mistake is explained to him, and ejects the passenger from the train, the railroad company is liable. *Kansas City, M. & B. R. Co.* v. *Riley*, 9 So. Rep. 443 (Miss.).

CONTRACT — CONSTRUCTION — AGENCY — OSTENSIBLE AUTHORITY. — The directors of a corporation appointed a committee to procure plans for the erection of a building, subject to their approval. The committee orally agreed with the builders that the contract should be awarded to the lowest bidder. A notice to bidders was then sent to the builders, which, besides setting forth the specifications, contained a clause stating that the committee reserved the right to reject all bids. The directors knew the above facts, but made no effort to inform the builders that the committee had no authority to award the contract absolutely. The plaintiff's bid was the lowest, and he sues the corporation for breach of contract. *Held*, that the offer was that at first made by the committee, and not that modified by the clause in the notice to bidders, and that the corporation was bound by the terms of the contract, on the doctrine of ostensible authority. *McNeil* v. *Boston Chamber of Commerce*, 28 N. E. Rep. 245 (Mass.).

CONTRACT — DEFENCE THAT OBJECT ILLEGAL. — A telegraph company received a message for transmission and accepted payment. In an action for statutory penalty incurred for non-delivery, the company cannot defend on the ground that the telegram related to an illegal transaction. *Gray* v. *West. Union Tel. Co.*, 13 S. E. Rep. 562 (Ga.).

CONTRACTS — PARTY WALL — DATE OF LIABILITY FOR CONTRIBUTIONS. — A built a party wall on the boundary line between his land and that of B, under an agreement by which B engaged to pay one-half of the cost of building the wall whenever he should use it. B sold his premises and his right to use the wall to C. *Held*, that the sale of the right to use the wall was in itself a use of it, and that B became liable on the contract at once. *Nalle* v. *Paghi*, 16 S. W. Rep. 932 (Tex.).

CONSTITUTIONAL LAW — ADMISSION OF WOMEN TO THE BAR. — Attorneys at law are not civil officers within article 7, paragraph 6, of the Constitution of Colorado, which provides that "no person except a qualified elector shall be elected or appointed to any civil office in the State." Therefore, in the absence of any statutory or constitutional inhibition, women will be admitted to the bar on equal terms with men. *In re Thomas*, 27 Pac. Rep. 707 (Col.).

CONSTITUTIONAL LAW — EMINENT DOMAIN — CONFLICTING USES. — A strip of land for a necessary town way can be taken from a school-house lot by county commissioners, when the use of the lot for school purposes, although considerably impeded, will not be entirely prevented. *Easthampton* v. *County Commissioners of Hampshire*, 28 N. E. Rep. 298 (Mass.).

CONSTITUTIONAL LAW — EMINENT DOMAIN — PRIVATE CORPORATIONS. — An act authorizing incorporated rural cemetery companies to take property on condemnation proceedings, to enlarge their cemeteries, is unconstitutional, in that it authorizes private corporations to exercise the power of eminent domain for private purposes. *Board of Health of Township of Portage* v. *Van Hoesen*, 49 N. W. Rep. 894 (Mich.).

CONSTITUTIONAL LAW — INTERSTATE COMMERCE. — A law which requires every person, a citizen of the United States, doing business within a State, to pay a license-tax is unconstitutional as to citizens of other States. *In re Spain et al.*, 47 Fed. Rep. 208.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — IMPAIRMENT OF OBLIGATION. — Where a contract between an individual and a common carrier secured to the former peculiarly favorable freight-rates; *Held*, that such an agreement was without effect at common law, a common carrier being bound to serve all alike; and therefore the clause of the Interstate Commerce Act prohibiting such agreements is not unconstitutional, as it did not occasion any impairment of obligation, though the contract was in operation at the time the act went into effect. *Fitzgerald* v. *Grand Trunk R. R. Co.*, 22 Atl. Rep. (Vt.) 76.

CONSTITUTIONAL LAW — TAXATION — INTERSTATE COMMERCE. — Since a State has the right to tax personal property within its jurisdiction even though it is

employed in interstate commerce, a State tax on such proportion of the whole capital stock of a foreign sleeping-car company as the number of miles over which its cars are operated within the State bears to the whole number of miles over which its cars are operated, is valid and constitutional, though such cars run into, through, and out of the State. Affirming 107 Pa. St. 156. Bradley, Field, and Harlan, JJ., dissenting. *Pullman Palace-Car Co.* v. *Commonwealth of Pennsylvania*, 11 Sup. Ct. Rep. 876.

EQUITY — INJUNCTION — ATTEMPT TO ANTICIPATE. — When, upon receiving notice of motion for an injunction to restrain him from building, the defendant immediately puts on a gang of extra men and builds forty feet before receiving notice that an *ex parte interim* injunction has been granted; *Held*, that upon the motion coming on the court will immediately enjoin the defendant from allowing the wall to remain without awaiting the result of the trial. *Daniel* v. *Ferguson*, [1891] 2 Ch. 27.

EQUITY — LIABILITY OF A MORTGAGEE IN POSSESSION. — When it appears that the mortgagee has been in possession, and he is called upon to account for the rents and profits, and he fails to do so, his mortgage will be declared satisfied. *Morgan* v. *Morgan*, 22 Atl. Rep. 545 (N. J.).

EQUITY — PROCEDURE — ABATEMENT — NEXT FRIEND — ATTAINING AGE. — A suit by minors by their next friend is not abated by the death of the next friend, nor by the attainment of their majority by the minors after suit brought. *Tucker* v. *Wilson*, 9 So. Rep. 898 (Miss.).

EQUITY — SPECIFIC PERFORMANCE OF CONTRACT. — The defendant was employed by the plaintiff as manager, and had contracted to give his whole time to the plaintiff's business. The plaintiff sought in this suit to have the defendant enjoined from entering into any business or forming any contract with a rival company which would prevent him from giving the whole of his time to the plaintiff. Injunction refused because there was no express negative promise, and the case distinguished from *Lumley* v. *Wagner* on this ground. It is a mistake to suppose that because a man has contracted to do a particular thing, he has impliedly agreed not to do any act inconsistent with the doing of the thing which he has promised to do. *Whitwood Chemical Co.* v. *Hardman*, [1891] 2 Ch. 416.

EVIDENCE — CONFESSIONS — EXCLAMATIONS MADE IN SLEEP. — The prisoner was heard to make certain exclamations relative to the crime with which she was charged. They were made in the night, and the witness could not say whether she was asleep or not. *Held*, such evidence is admissible, and the jury must give it the weight they think it deserves. *State* v. *Morgan*, 13 S. E. Rep. 385 (W. Va.). *Contra*, 19 Cal. 40.

EVIDENCE — DEED ABSOLUTE IN FORM. — A conveyance absolute on its face, and not intended as a mortgage, cannot be shown to have been intended as a conditional sale, or a sale with a right to redeem. *Peagler* v. *Stabler*, 9 So. Rep. 157 (Ala.).

INTERNATIONAL LAW — RIGHT OF ALIEN. — An alien has no right to land upon British soil, and therefore has no cause of action against one who prevents him from landing. *Musgrove* v. *Chun Teeong Toy*, [1891] A. C. 272.

MORTGAGES — MORTGAGEE'S RIGHT TO POSSESSION. — A chattel mortgage authorizing the mortgagee to take possession of the property whenever he deems himself insecure gives the mortgagee an absolute discretion in the matter, and his right to take possession does not depend on the fact that he has reasonable grounds to deem himself insecure. *Cline* v. *Libby*, 49 N. W. Rep. 832 (Wis.).

MORTGAGES — MORTGAGEE'S RIGHT TO POSSESSION. — A clause in a chattel mortgage providing that the mortgagee may, at any time he feels insecure, treat the debt as due, and take and sell the property, will not authorize the seizure and sale of the property unless the mortgagor is about to do, or has done, some act which tends to impair the security. *J. I. Case Plow Works* v. *Marr*, 49 N. W. Rep. 1119 (Neb.).

NEGLIGENCE — DUTY TO TRESPASSER — IMPLIED INVITATION. — In an action for negligence, it appeared that plaintiff, an infant, was injured while playing on a turn-table belonging to defendant company, situated six hundred feet from the highway. *Held*, that it was not error to direct a verdict for defendant; the latter was under no duty, as towards a trespasser, to refrain from ordinary negligence in the management of its apparatus; and the fact that the turn-table would naturally attract

children did not make defendant liable as upon an implied invitation or license to enter. *R. R. Co.* v. *Stout*, 17 Wall. 657, disapproved. *Daniels* v. *N. Y. & N. E. R. R. Co.*, 28 N. E. Rep. 283 (Mass.).

NEGLIGENCE — DUTY TO TRESPASSER — IMPLIED INVITATION. — A railroad company is liable for injuries received by a child while playing upon a turn-table upon its premises near a public street, the turn-table not being protected by any inclosure nor guarded by its employees, though it was provided with the customary fastenings to keep it from revolving. *Barrett* v. *Southern Pac. Co.*, 27 Pac. Rep. 666 (Cal.).

PARTNERSHIP — FOREIGN FIRM — SERVICE OF PROCESS. — The plaintiff, an English firm, entered into a contract with the defendant, a foreign partnership. The contract was made in England. The writ was issued against the partnership, and was served in England on a member of it. *Held* (in the Court of Appeal, reversing the decision in the Queen's Bench Division), that the writ should be set aside because it was irregular. The rules of practice, allowing actions against a firm, in the firm name, are not intended to vary the rights of the parties. A plaintiff who sues partners in their firm name in truth sues them individually. This writ is of no avail against the partners resident abroad, and it is of no avail against the one in England, since it is taken out in such a form that judgment would have to be rendered against the assets of the firm and therefore of the partners who are without the jurisdiction of the court. *Heineman & Co.* v. *Hale & Co.*, [1891] 2 Q. B. 83 (Eng.).

REAL PROPERTY — CONVEYANCE BY WIFE — INTIMIDATION BY HUSBAND. — In the absence of any fraud or inadequacy of price or notice on the part of a grantee, he cannot be held responsible for the conduct of the husband of the grantor in intimidating her to execute the deed. *Fightmaster* v. *Levi*, 17 S. W. Rep. 195 (Ky.).

REAL PROPERTY — DEEDS — DELIVERY. — Filing a deed for recording is a presumptive delivery. Such presumption, however, may be rebutted by proof that the grantor did not thereby intend to pass title as of the date of the deed. *Glaze* v. *Three Rivers Farmers' Mut. Fire Ins. Co.*, 49 N. W. Rep. 594 (Mich.).

REAL PROPERTY — DOWER. — H., during her husband's lifetime, joined with him in executing a mortgage on a certain piece of land. After his death, this piece of land was assigned her for dower, together with certain scrip and bonds which deceased had pledged. *Held*, in action by H. against her husband's administrator, that the court would not direct the latter, out of the personal property left in his hands, to redeem from their incumbrances either the land or the bonds and scrip above mentioned. *Hewitt* v. *Cox*, 15 S. W. Rep. 1026 (Ark.).

By this decision the Arkansas court adopts the rule which is supported, on the whole, by the weight of American authority.

REAL PROPERTY — HIGHWAYS — DEDICATION — ACCEPTANCE BY USER. — A road which has been opened to public travel by the land-owners, and worked and used for that purpose for more than ten years with their acquiescence, must be regarded as a highway established by dedication. *Gerberung* v. *Wunnenberg*, 49 N. W. Rep. 861 (Ia.).

REAL PROPERTY — HIGHWAYS. — Where a public highway extended across a tract of land and terminated at tide-water, and the State subsequently conveyed its rights below high-water mark to a corporation which artificially reclaimed the land; *Held*, that the right of way did not thereafter extend to the new tide-water mark over the land so artificially reclaimed. *Cent. R. R. Co. of New Jersey* v. *City of Elizabeth*, 22 Atl. Rep. (N. J.) 47.

REAL PROPERTY — PRESCRIPTION — DISSOLUTION OF SALE. — The action to dissolve a sale for non-payment of the price is prescribed by ten years. Such prescription is suspended during minority of heirs. The prescription running against a father at the time of his death is added to the time which has run since the heir has become of age. *Smith* v. *Escoubas*, 9 So. Rep. 907 (La.).

STARE DECISIS — MARRIED WOMEN — MORTGAGE OF SEPARATE ESTATE. — Where at the time a married woman mortgaged certain property she had the power so to do under the decisions of the Supreme Court, the rights of the mortgagee are not affected by the subsequent overruling of such decisions. *Farrior* v. *New England Mortgage Security Co.*, 9 So. Rep. 532 (Ala.).

STATUTE OF FRAUDS — AGREEMENT NOT TO BE PERFORMED WITHIN A YEAR. — An oral agreement upon sufficient consideration by an agent of the payee of a note, to extend the time of payment for more than a year, is not within the Statute of Frauds, where the payor executed his part of the agreement by the payment of the consideration. *Grace* v. *Lynch*, 49 N. W. Rep. 751 (Wis.).

STATUTE OF FRAUDS — ASSUMPTION OF DEBT OF THIRD PERSON. — A purchaser who accepts a conveyance of real property, reciting that there is a mortgage lien thereon, which the purchaser assumes to pay, cannot avoid the payment of such lien by a claim that it was an oral promise to pay the debt of another, and so void by the Statute of Frauds. *Neiswanger* v. *McClellan*, 26 Pac. Rep. 18 (Kan.).

STATUTES — MECHANICS' LIEN — MATERIALS. — Lumber sold to a sub-contractor on a railway, for the erection of shanties for his employees and stables for his teams, is not within the statute giving a lien for labor performed or materials furnished in the construction, repair, and equipment of the railroad, and gives no right of action against the railway company. *Stewart Chute Lumber Co.* v. *Missouri Pac. Ry. Co.*, 49 N. W. Rep. 769 (Neb.).

TRUSTS — LIMITATIONS OF ACTIONS. — The use by a guardian of his ward's money, after the latter has reached his majority, in purchasing land in his own name, is an appropriation of the money to his own use, and a repudiation of the ward's right as *cestui que trust*, whereon a cause of action at once arises, against which the Statute of Limitations begins to run. *Potter* v. *Douglas*, 48 N. W. Rep. 1004 (Ia.).

TRUSTS — PAROL AGREEMENT — STATUTE OF FRAUDS. — Where A conveys land to B pursuant to an oral agreement that B shall sell the same and pay the proceeds to A, a parol trust only attaches to the money received if the land is sold, and, if confirmed by B after the sale, may be enforced at law. But the right to enforce the agreement dies with B, and the lands so held descend to his heirs unincumbered by any trust, as such parol agreement is void under the Statute of Frauds. *Collar* v. *Collar*, 49 N. W. Rep. 551 (Mich.).

TRUSTS — POLICY FOR BENEFIT OF WIFE — MURDER OF INSURED BY WIFE. — Where a man insures his life for benefit of wife by virtue of the Married Woman's Act, a trust is thereby created in favor of the wife. If, therefore, the wife murders the insured, his executors cannot maintain an action on the policy against the insurers, such an action being for the benefit of the wife, and it being contrary to public policy that she should profit by her crime. The question whether or not she knew of the existence of the policy before she committed the murder is immaterial. *Cleaver* v. *Mutual Reserve Fund Life Association*, 39 Weekly Reporter 638.

USURY — PAYMENT — ACTION TO RECOVER. — Where a debtor has paid a note tainted with usury, he cannot maintain an action to recover back the usurious interest. *Blain* v. *Willson*, 49 N. W. Rep. 224 (Neb.).

WILL — CHARITABLE GIFT — LAPSE — CY-PRÈS. — A charitable bequest to an institution which comes to an end after the death of the testator, but before the legacy is paid, does not fail for the benefit of the residuary legatee. The property falls to the Crown, which will apply it for some analogous purpose of charity. *In re Slevin*, [1891] 2 Ch. 236.